



**THE ATTORNEY GENERAL  
OF TEXAS**

February 10, 1989

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LO-89-12

Dear Mr. Dick, Mr. Shepherd and Ms. Tomlinson:

We are combining your separate requests because the issues are identical. You ask whether a county may pay private attorney's fees incurred in connection with grand jury investigations of county commissioners. We find that they may.

While we have been unable to find a prior legal opinion that specifically relates to payment of private attorney's fees for representation of county officials before a grand jury, prior opinions have consistently approved the expenditure of public funds to pay private attorneys to defend public officials where a bona fide public interest will be protected by such payments. See e.g., City of Corsicana v. Babb, 290 S.W. 736 (Tex. Comm'n App. 1927, judgment adopted) (city may pay to defend policeman in a criminal action); Attorney General Opinions JM-968 (1988) (school district may pay to defend trustee in intentional tort action); JM-824 (1987) (county may pay to defend county official against charges of violating civil rights and other charges); JM-755 (1987) (county may pay to defend a sheriff in proceedings arising from a court of inquiry); H-887 (1976) (city may pay to defend city officials in assorted civil rights, tort, and other civil cases). See also Attorney General Opinions MW-252 (1980) (county may pay court costs adjudged against a

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district attorney); H-544 (1975) (county may pay to defend a judge in a lawsuit arising out of a court of inquiry); H-70 (1973) (school district may pay liability insurance to protect school trustees).

The authority to pay expenses that appear to protect private interests is contingent on a finding that the public also has a bona fide interest in the defense. In Attorney General Opinion JM-824 (1987) this office restated the general rule as follows:

Where a Texas governing body believes in good faith that the public interest is at stake, even though an officer is sued individually, it is permissible for the body to employ attorneys to defend the action. . . . The propriety of such a step is not made dependent upon the outcome of the litigation, but upon the bona fides of the governing body's motive.

Attorney General Opinion JM-824 added the following language to its reiteration of the general rule:

We emphasize that the authority of the county to employ attorneys to defend county officers and employees is limited to situations where the legitimate interests of the county -- and not just the personal interests of the officers or employees -- require the assertion of a vigorous legal defense on behalf of the public interest.

. . . .

Thus, the question of the lawfulness of expending public funds to protect the public interest in a suit brought against a public official or employee will always be a question of fact. The question that the commissioners must decide is whether or not the suit really is one that concerns the interests of the county or whether the benefits provided by public funds accrue only to the personal benefit of the public official or employee represented at taxpayers' expense.

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While the opinions cited above do not concern payment of attorneys fees incurred in connection with a grand jury investigation, we believe the same considerations apply. A county commissioners court could determine that such an expenditure would protect a legitimate county interest.

We note that the commissioners courts in both Fort Bend County and Bosque County have already made such a determination.

Very truly yours,



Karen C. Gladney  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

KCG/er  
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